

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 831 OF 2011

Mr. Roy Kunjukutty Cherian & Others. ... Applicants.

V/s.

The State of Maharashtra & Anr. ... Respondents.

Mr. Prakash Naik a/with Mr. Amol Fouzdar and Mr. Vishal Shriyan i/by M/s. Khaitan & Co. for the Applicants.

Mr. V. B. Konde-Deshmukh, APP for the State.

CORAM : M.L.TAHALIYANI,J.

DATE : 02nd JULY, 2015

P.C. :

1 Heard the learned counsel appearing for applicants and learned additional public prosecutor for the State.

2 This application impugns the order passed by the learned Magistrate, issuing process against the applicants to answer the charge for the offence punishable under section 16 of the Prevention of Food Adulteration Act. Section 17 of the said Act has been made applicable because some of the applicants are alleged to be vicariously liable. The food article in question was black-pepper. The report of the public analyst reveal that it contained mineral oil. Therefore, the prosecution has been launched.

3 The issue which needs determination in the present application is as to whether the applicants have lost their statutory right under section 13(2) of the Act.

“Section 13(2) of the Act reads as under :

(2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under section 14-A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.”

It is thus obvious that the Local (Health) Authority was under obligation to intimate the result of examination food article to the vendor after filing of the prosecution and the vendor was entitled to have the extra sample examined by the Central Food Laboratory. Such an application is to be made within 10 days of the receipt of the report of the Public Analyst.

4 In the present case, it is an admitted position that the black-pepper in question was stated to be best before 25th October, 2001. The complaint was filed on 8th August, 2002 though the sample was drawn on 31st July, 2001. As such the complaint was filed after the expiry of the 'best before date'. Thus the right of the applicants was frustrated by the delayed filing of the complaint. Such a prosecution need not be allowed to be continued.

5 The prosecution pending against the applicant vide R.C.C.No. 111/ 2002 in the Court of Chief Judicial Magistrate, Pune for the offence punishable under section 16 read with section 17 of the Prevention of Food Adulteration Act, shall stand quashed.

6 Bail bond, if any, stands cancelled.

7 Criminal application is disposed of accordingly. Rule is discharged.

(JUDGE)

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